

In the Court of Appeals of the State of Alaska

Kip E Lynch,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13402**

Order

Date of Notice: **7/11/2019**

Trial Court Case No. **3AN-17-09660CI**

Although the Appellant, Kip Lynch, is represented by an attorney in this appeal, in April 2019 he filed a pro se motion asking this Court to hold this appeal in abeyance and then remand the case to the superior court for further proceedings in his underlying application for post-conviction relief. Pursuant to Appellate Rule 518(b), the Clerk's Office rejected his filing because Mr. Lynch is represented in this appeal by Jason A. Weiner.

Mr. Lynch now seeks reconsideration of the Clerk's rejection of his pro se filing. His motion to accept this late-filed request for reconsideration is **GRANTED**.

Appellate Rule 518(b) provides that a party who is represented by an attorney in an appellate proceeding may not appear or act in the party's own behalf in that appellant proceeding. Among other things, this means that a party represented by an attorney may not file pro se pleadings. Because Mr. Lynch is represented by an attorney in this appeal (by virtue of Appellate Rule 517.1), he is not allowed to file pro se pleadings in this appeal. For that reason, the Clerk's rejection of Mr. Lynch's pro se filing is **AFFIRMED**.

That said, Mr. Lynch raises another issue in his current pleadings — he

asserts that he has a conflict of interest with Mr. Weiner, his current attorney, because (according to Mr. Lynch) this is the same attorney who filed a certificate of no merit in the proceedings below. Because Mr. Lynch is represented at public expense (by contract through the Office of Public Advocacy), he does not have the right to reject appointed counsel and have new counsel appointed at public expense in the absence of any showing of cause for that change. *See Mute v. State*, 123 P.3d 1081, 1088 (Alaska App. 2005). If Mr. Lynch wants new counsel appointed at public expense, then the superior court must determine whether there is good cause for that change. If Mr. Weiner did indeed file a certificate of no merit in the proceedings below then this would constitute a conflict of interest on appeal.

IT IS ORDERED:

1. This case is remanded to the superior court to determine if there is good cause to remove Mr. Weiner, and if so, to then appoint a different attorney to represent Mr. Lynch. The superior court shall inform this Court on this matter by August 21, 2019.

2. Mr. Lynch's renewed request that his appeal be held in abeyance and remanded to the superior court so that he can reopen his application for post-conviction relief is **DENIED**. This denial, however, is without prejudice. After the superior resolves the representation issue, Mr. Lynch's attorney may renew this motion if the attorney believes it is appropriate to do so.

3. To the extent that Mr. Lynch makes other requests in his most recent pleadings, those requests are **DENIED**. This denial, however, is without prejudice, and may be renewed by Mr. Lynch's attorney if the attorney believes it is appropriate to do so.

Entered under the authority of Chief Judge Allard.

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July 11, 2019

Clerk of the Appellate Courts

Sarah Anderson, Deputy Clerk

cc: Anchorage Trial Court Appeals Clerk
Judge Erin B. Marston

Distribution:

Mail:
Weiner, Jason A.
Simel, Nancy R.